No. 2415.

United States Circuit Court of Appeals,

For the Ninth Circuit.

U. S. OIL & LAND COMPANY,
a Corporation,

Appellant,

vs.

TERESA BELL, as Administratrix of the Estate of Thomas Bell, Deceased, et al.,

Appellees.

BRIEF FOR APPELLEES

T. Z. BLAKEMAN,
PETER J. CROSBY,
Solicitors for Appellees.

Filed.....1914.

....., *Clerk.*

By....., *Deputy Clerk.*

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Teresa Bell, as Administratrix, etc., and the other Appellees represented by Solicitor T. Z. Blakeman, Esq., and for the Appellees represented by Solicitor Peter J. Crosby, Esq.

STATEMENT OF THE CASE.

Inasmuch as the Statement of the Case by Appellant is partial and in several particulars erroneous, these Appellees set forth here a concise abstract of facts, from the Record, which present and illustrate the questions involved in this appeal.

The following is a copy of the Decree appealed from, to wit:

(Title of Court and Cause.)

DECREE.

This cause came on to be heard in the District Court of the United States, for the Southern District of California, Southern Division, the Honorable Frank H. Rudkin, District Judge of the United States for the Eastern District of Washington, duly presiding, on the 20th day of March, A. D. 1913, upon the defenses heretofore presentable by plea in bar made in the pleadings to the bill of complaint on file herein as follows: the joint and several answer of the defendants, Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, and Teresa Bell, individually; the joint and several answers of the defendants, Thomas Frederick Bell, Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell, W. E. Bell, also known as Eustace Bell, Reginald Bell, John Lewellyn Auzerais and Peter J. Crosby; the joint and several pleas in bar of the defendants W. P. Hammon and F. C. van Deinse, heretofore overruled; and the joint and several answers of the said defendants W. P. Hammon and F. C. van Deinse; and at the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered, and all proceedings taken and acts done thereunder were taken and done, substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the said joint and several answer of the defend-

ants W. P. Hammon and F. C. van Deinse; and at the said hearing it being further stipulated and agreed by the complainant and the said defendants that a decision might be given and made upon the said defenses, and decree thereupon entered herein accordingly, although at the time of such decision and entry the judge presiding might no longer be sitting in the above entitled Court; and the said cause having been argued by counsel and submitted; and the Court upon consideration of the said defenses having sustained the same and having ordered that the said bill of complaint be dismissed and that a decree of dismissal be made and entered accordingly;

Now therefore it is by the Court ordered, adjudged and decreed that the bill of complaint herein be and the same is hereby dismissed and that the above named defendants do have and recover from the complainant their costs herein, taxed at $.....

Dated July 17th, 1913.

FRANK H. RUDKIN, *Judge.*

(pp. 296-7 of Record.)

The appellant made a motion to "correct and modify" said decree, based upon the affidavit of James L. Crittenden, by striking out of the decree the recital of the admission and stipulation of the complainant and substituting therefor that the complainant and defendants admitted and stipulated, "that the *papers* purporting to be copies of judgments, orders and decrees, alleged or claimed to have been rendered and entered" in the State Courts, "are substantially correct copies thereof." (Record pp. 298-302.)

The motion was opposed by the affidavits of T. Z. Blakeman, Peter J. Crosby and Chauncy M. Goodrich, solicitors for the defendants. (Record pp. 304-319.)

There was a reply affidavit by said James L. Crittenden. (Record pp. 320-22.)

On December 8th, 1913, the said District Court made its order denying the motion to modify said decree, "except as to the matters and things covered by the amendment to said decree this day signed and filed herein." (Record p. 324.) The amendment to the decree is as follows, to wit:

(Title of Court and Cause.)

CERTIFIED COPY OF MODIFICATION OF DECREE.

This cause came on this day to be heard on motion of the complainant to modify the following recital contained in the decree heretofore rendered and entered in this cause on the 21st day of July, 1913, namely:

"And at the said hearing, it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, the Superior Court of the State of California in and for the County of Santa Barbara, and of the Superior Court of the State of California in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder, were taken and done substantially as set forth and described in each of the said several answers, and particularly in the first defense set out and made in the said joint and several answer of the defendants, W. P. Hammon and F. C. Van Deinse."

And the Court being fully advised in the premises, it is considered, adjudged and decreed that said recital be, and the same hereby is modified by adding thereto the following:

"But the complainant did not stipulate or admit that such judgments or decrees were valid or binding, or that the said several courts had jurisdiction to render or enter the same."

It is further ordered and decreed that this modification and order be entered nunc pro tunc as of July 21, 1913.

Done in open court this 8th day of December, A. D. 1913.

FRANK H. RUDKIN, *Judge.*

(Record p. 323.)

Thereupon on the same day, an Order of Court was made and entered denying the motion to modify the decree (p. 324 of Record).

The said order of Court denying the said motion to "correct and modify" the decree was not excepted to by complainant and the making of said order denying said motion was not and is not assigned, by the appellant, as error, though there are thirty-nine assignments of error (Record pp. 324-341). The appeal is from "the decree entered July 21, 1913, and modified by order and decree entered eighth day of December, 1913." (Record pp. 341-2.) There is no appeal from the order or decree denying the motion of complainant (appellant) to correct and modify the said decree dismissing the bill of complaint.

Therefore there is no question before this, Appellate, Court as to the correctness of the said decree in its recital of the admission and stipulation of the complainant. The only question for this Court, we contend, is, can the decree of the lower Court, based upon "each and all of the judgments, orders and decrees of the Supreme Court and Superior Courts of California, and all proceedings and acts taken and done thereunder as set forth and described in each

the said several answers of the defendants," be sustained, it being admitted and stipulated by the complainant in the lower Court that "each and all of the said judgments, orders and decrees of the Courts of California were rendered, made and entered, and all the proceedings taken and acts done thereunder, were taken and done substantially as set forth and described in each of the said several answers" of the defendants, enumerated in said decree, and "it being further stipulated and agreed by the complainant and the said defendants that a decision might be given and made upon the said defenses and decree thereupon entered accordingly." (Record pp. 296-7.)

Confirmation of the foregoing statement and correctness of contention aforesaid of these appellees is found in the several minute entries of the hearing by the lower Court, which resulted in the said decree dismissing the bill of complaint. Minute entries of said hearing were made three separate times (Record pp. 289-290) and in each instance the entry is the same, to wit:

"This cause coming on this day to be heard separately on the special defense, viz: previous judgments, etc., as set up by the bill and answer."

Then follows the names of counsel who appeared and argued "said special defense" and the last of said minute entries recites: *"it is ordered that said cause be and the same is hereby submitted to the Court for its consideration and decision on said special defense."* (Record pp. 290-91.)

No objections were made or exceptions taken to said entries.

Furthermore, the recital in said decree as to what admission and stipulation was made presents a question of fact which this Court will not reconsider.

The defendant, Teresa Bell, individually and as administratrix, with the other defendants represented by her solicitor, demurred to the bill of complaint on the ground that it appeared from the bill that the complainant was not entitled to the relief prayed for (Record p. 101).

Other defendants also presented general demurrers. The Court overruled said demurrers (Record p. 175). We shall contend that if the decree of dismissal could not be sustained on the bar of the judgments, orders and proceedings thereunder taken as set forth in answers and admitted to be substantially correct, still the decree must stand, because the bill of complaint does not state a cause for equitable or any relief at the hands of the lower Court.

As the defendants' rights rest mainly on the final judgment in *Bell* vs. *Staacke* and the sale thereunder of the property in controversy therein and herein, a correct statement of the issues and material facts involved in that action as well as in *Bell* vs. *San Francisco Savings Union,* is due the Court, though we might be content to point solely to the said final judgments and to the identity of the subject matter and parties in that action with the same in this.

A very clear statement of those issues and facts is contained in the decision of the Supreme Court of California in *Bell* vs. *Staacke,* 141 Cal., 194-202, 74 Pac. Rep. 774, made in December, 1903, which concluded with an order for a new trial. The facts are set forth more in detail in the decision of the California Superior Court for Santa Barbara County in *Bell* vs. *San Francisco Savings Union et al.,* as copied in complainant's bill (Record pp. 39-72), which became final by the affirmance by said

Supreme Court February, 1908, of the order denying the U. S. Oil & Land Company a new trial.

153 Cal. 64; 94 Pac. Rep. 225.

The materials facts are also set forth in the Findings and decision of said Superior Court made October 26th, 1904, on the third trial of *Bell* vs. *Staacke,* to wit, the new trial ordered by the Supreme Court as aforesaid, and copied into the answer of the defendants, Van Deinse and Hammon herein, at pages 231-242 of the Record, which Findings became final July, 1907, on the affirmance by said Supreme Court of the Order denying plaintiff's (complainant's grantor) motion for a new trial. 151 Cal. 544, 91 Pac. Rep. 322. (Error in Record p. 282 recites Thomas Bell as owner of the land there referred to instead of "plaintiff," and omits description of the other tract owned by Thomas Bell.)

For the convenience of the Court, we recite here the material facts relative to the said case of *John S. Bell* vs. *George Staacke et al.*

Thomas Bell was the uncle of John S. Bell, had educated him, and in 1874 gave him a tract of land situate in the northern part of Santa Barbara County, California, containing 14,000 acres. Thomas thereafter loaned and advanced money to John until 1885, when John's indebtedness was over $50,000.00. They had a settlement then, resulting in John reconveying to Thomas 4000 acres of said land. The two tracts thereafter became known as the 4000 acre and the 10,000 acre tract. Thomas continued to honor his nephew's drafts, but always debited him with the amounts with interest.

In 1887, during a boom in Southern California lands, John and Thomas Bell united in a sale of the said two tracts to one Grover, on terms one-fifth cash and the balance in four equal yearly in-

stallments. John's portion of the cash payment was applied on his indebtedness and left a balance of $25,500.00 still due Thomas. Grover's notes for the deferred payments on both tracts, secured by mortgage on same, were made payable to Thomas. Thomas and John then entered into a written agreement dated August 27th, 1887 (recited in Findings in *Bell* vs. *San Francisco Savings Union,* p. 49 of Record), which recited the sale of their respective tracts, the price and terms, the application of the cash payments and the balance due Thomas, and provided that Thomas should hold the said notes for the deferred payments on John's land as security for said balance of $25,500.00, and as security for any future loans and advances.

Grover failed to meet the first installment, and Thomas Bell began foreclosure suits in his own name on both said tracts. In this situation, Thomas and John agreed orally with Grover to release him from the obligation of said notes and mortgages, in consideration of Grover reconveying the lands. In carrying out this agreement, Grover, at the request of the Bells, conveyed by deed, dated March 7th, 1889, both said tracts to George Staacke, who was the bookkeeper and confidential agent of Thomas Bell. Thomas thereupon surrendered all the notes to Grover, released the mortgages, and dismissed the foreclosure suits.

Staacke was put in possession of both tracts, but the management was under the control of Thomas through a superintendent appointed by him with the consent of John. The proceeds of both tracts went to Thomas Bell, but the accounts were kept separate, those from the 4000 acre tract going directly into Thomas' individual account, those from the 10,0000 acre tract going into John's account with Thomas. John continued thereafter to draw from Thomas more than the net proceeds of his

land amounted to, Thomas rendering yearly to John a statement of his account, which statements were always approved by John. This state of affairs continued until the death of Thomas in October, 1892. At the close of 1891, John's indebtedness to Thomas was over $100,000.00.

In February, 1892, Thomas wrote John that it was inconvenient for him to be out of the large sum of money that John owed him and that he had borrowed $60,000.00 of the San Francisco Savings Union on the security of his (John's) land and his own. The $60,000.00 so borrowed was placed to the credit of John. Thomas, in borrowing the money, caused Staacke to make his note to the Savings Union, and which he endorsed, and to convey by deed of trust both tracts of land to Campbell and Kent, trustees for the Savings Union, as security for the payment of the said sum of $60,000.00.

John accepted the credit and acquiesced in all that Thomas had done. John continued thereafter to overdraw his account until the death of Thomas October 16th, 1892, when the balance due from John exceeded $52,000.00.

Shortly after the death of Thomas, John presented to the executors of the will of Thomas a claim against the Estate of Thomas. The claim was, in effect, that Thomas had agreed to hold and manage his 10,000 acre tract, receive all the rents and profits thereof until a contemplated railroad through the land should be completed within four years or until a sale of the land could be made and to pay him (John) the sum of $360 each month, independent of what the rents and profits of said land might be and that said land and the rents and profits thereof should be charged with the payment of said monthly sum.

Demand was made that the executors should continue to make the advances until the expiration of the four years.

The executors rejected the claim, and in March, 1893, John began the suit of *John S. Bell* vs. *George Staacke et al* in the Superior Court of Santa Barbara County to enforce his said claim (this is the action so often referred to as *Bell* vs. *Staacke.*) The complaint was verified by the plaintiff, the executors of the will of Thomas Bell as such, and Staacke individually were made defendants. It set forth the claim aforesaid; alleged that Staacke held the 10,000 acres in trust for plaintiff and *in trust for Thomas Bell according to the beneficial interest of Thomas Bell;* that the monthly payments of $360 were a lien and charge upon the said land, and that it was agreed between plaintiff and Thomas Bell that the said monthly allowance should continue until the sale of said property, and should be, with other amounts theretofore advanced and to be thereafter advanced by Thomas Bell to plaintiff, charged to plaintiff, to be reimbursed by him to Thomas Bell out of the proceeds of such sale.

The executors of the will of Thomas Bell and Staacke answered, denying that Thomas Bell ever made any agreement to pay or advance to the plaintiff any monthly sum or allowance.

The executors and Staacke with their answer filed a cross-complaint in which they alleged the indebtedness of John to Thomas Bell, and the fact that the 10,000 acres belonging to John was held in the name of Staacke in trust, first as security for the payment of John's said indebtedness; prayed for judgment against the plaintiff for the amount due and for sale of the 10,000 acres and the application of the proceeds of the sale to the payment of the amount found due from plaintiff, and for general relief.

The action remained in this state of the pleadings until June, 1897. There was no difference then between the parties as to the trust for which Staacke held the title to the 10,000 acres, except that Staacke and the executors denied that the said land was charged with any payments to be made to John by the Estate of Thomas Bell. John did not want the land forced to sale, and the executors were willing for him to have time to effect a favorable sale. In December, 1896, John conveyed the 10,000 acre tract to his wife, Catherine M. Bell, alias Kate M. Bell.

Early in 1897, John employed James L. Crittenden as his attorney, and joined his wife in conveying to Crittenden an undivided one-half of the 10,000 acre tract.

On June 9th, 1897, Crittenden, as attorney for John, with Richards & Carrier, his attorneys then in the pending suit, filed an amended and supplemental complaint changing entirely the object and purpose of the action. The said amended complaint alleged, in substance, that Staacke held the 10,000 acre tract solely in trust for John and to convey to John, on demand; denied that John was, or had been, indebted to Thomas in any amount, and prayed that Staacke be compelled to convey the said land to plaintiff, freed from any claim or lien in favor of the Estate of Thomas Bell. In this amended and supplemental complaint, John S. Bell, by his new attorney, attacked the said deed of trust; alleged that Staacke had, in violation of his trust, borrowed $60,000 from the San Francisco Savings Union and had, in violation of his trust, conveyed the land to the Savings Union trustees as security, and that Staacke and Thomas Bell had appropriated to their own use the said $60,000.00. But, as neither the San Francisco Savings Union nor the trustees in the said deed of trust were made parties defendant in the said amended and supplemental complaint, or

otherwise made parties to that action, nothing came of the said attack therein on the said deed of trust.

Staacke and the executors answered the amended and supplemental complaint, denying its material allegations. The plaintiff filed an amended answer to the cross-complaint of Staacke and the executors, conforming to the new theory of his case.

On these pleadings the action of *Bell* vs. *Staacke* was *first tried,* in June, 1897, before Judge Day. On conclusion of the trial, and after submission of the case, Judge Day filed a written opinion in favor of the executors on their cross-complaint. There was some delay on the part of the defendants to have the formal findings and decision entered, and thereafter, on motion of the plaintiff, based on a trivial informality in the proceedings at the trial, the said Judge vacated the submission and restored the case to the trial calendar. Thereafter Executor Maxwell resigned and Staacke became sole executor of the will of Thomas Bell. In March, 1900, the powers of Staacke as executor were suspended by the Court having charge of the administration of the Estate of Thomas Bell, to wit, the Superior Court for the City and County of San Francisco, and Teresa Bell, the widow of Thomas Bell, was appointed special administratrix of said estate. She remained such special administratrix until the Supreme Court of California had, on Staacke's appeal, affirmed his removal as executor, and thereupon, on February 19th, 1902, said Teresa Bell became administratrix of said estate with the will annexed, and has ever since continued as such.

In June, 1900, the said administratrix, having been substituted as defendant in place of Staacke as executor in *Bell* vs. *Staacke,* brought said action to trial, and it was then tried, the *second time,* before said Judge Day. After the submission of the case on this second trial, the said Judge concluded that

Staacke held the 10,000 acre tract solely in trust for John S. Bell and to convey the same to him on his demand, free from any lien or claim in favor of Thomas Bell or his estate. Formal findings to this effect were made and filed March 6th, 1901. Proof was made at this trial that John S. Bell had, by deed dated December 22nd, 1896, conveyed the said 10,000 acre tract to his wife, Catherine, alias Kate M. Bell, and that John and his said wife had, by joint deed dated June 12th, 1897, conveyed to James L. Crittenden an undivided one-half of said tract, and thereupon an order of Court was made that said James L. Crittenden and Kate M. Bell be permitted to prosecute the said action in the name of the plaintiff, John S. Bell, for their benefit.

Judgment, following said findings, was filed in said action June 29th, 1901, and entered of record July 9th, 1901, directing Staacke to convey to Catherine M. Bell and James L. Crittenden each an undivided half of said 10,000 acre tract. Judge Day, in his said findings, held that John S. Bell was indebted, personally, to Thomas, at the date of his death, in the sum of $52,120.15, and the judgment also was that the administratrix have and recover of John S. Bell the said sum with interest thereon from October 18th, 1892.

The defendants in due time, to wit, March 19th, 1901, moved for a new trial; their motion was denied June 7th, 1901, and on July 8th, 1901, said defendants gave notice of appeal to the Supreme Court from the Order denying their motion for a new trial and from all of said judgment, except that part which adjudged that John S. Bell was indebted to Thomas Bell.

The plaintiff moved the Supreme Court to dismiss both appeals. The Supreme Court granted the motion to dismiss the appeal from the judgment on the ground that that appeal was premature; i. e.,

was taken before the judgment had been copied into the Judgment Book, *but denied the motion to dismiss the appeal from the Order denying the motion for new trial.*

Bell vs. *Staacke,* 137 Cal. 307; 70 Pac. Rep. 171.

When the appeal from the Order denying the motion for a new trial was heard by the Supreme Court, the Court, in its decision, went into the merits of the case fully, reversed the Order denying a new trial, and ordered a new trial as to all issued except the issue involving the amount of indebtedness of John Bell.

Bell vs. *Staacke,* 141 Cal. 186; 74 Pac. 774.

Under the Order of the Supreme Court last aforesaid the action came to trial again and for the *third time,* in April and May, 1904, before Judge Taggart. The case was fully tried again on all the issues made by the pleadings, except as to the issue involving the amount of the indebtedness of John Bell to Thomas Bell, that issue having been already determined on the former trial in favor of the Estate of Thomas Bell and the amount fixed at $52,000.00, as hereinbefore stated. The findings and decision of Judge Taggart were made and filed October 26th, 1904, in favor of the administratrix of the Estate of Thomas Bell, on the said cross-complaint of the defendants. These findings and decision of Judge Taggart are copied in full in the answer of the defendants, Hammon and Van Deinse herein (Record pp. 231-242). Judgment was entered on the said findings and decision on the 28th of October, 1904. That judgment declared that a lien existed in favor of the Estate of Thomas Bell upon the 10,000 acre tract, for the payment of the said indebtedness of John S. Bell. At the time of the making of the said decree, the indebtedness of John S. Bell, with interest thereon, amounted to $95,901.00.

A commissioner was appointed by the Court to make the sale. The said decree and Order of Sale are set out in full in the said answer of the defendants, Hammon and Van Deinse herein, on pages 241-46 of the Record. There was a motion for a new trial made on behalf of the plaintiff, John S. Bell, by his attorney and grantee, James L. Crittenden, which motion was denied and an appeal was taken to the Supreme Court from the said judgment, and also from the Order denying a new trial. The appeal from the judgment was dismissed by the Supreme Court because of the failure of the appellants to file a transcript on appeal within the time allowed.

Bell vs. *Staacke,* 148 Cal. 404.

The appeal from the Order denying a new trial was heard by the Supreme Court in April, 1907, and its judgment given July 22nd, 1907, affirming the Order of the Superior Court denying the said motion made on behalf of plaintiff for a new trial.

Bell vs. *Staacke,* 151 Cal. 544.

There had been no stay bond given by the plaintiff, John S. Bell, or by his grantees, James L. Crittenden and Catherine M. Bell, upon either of the appeals taken by them as aforesaid; so, when their appeal from the judgment last aforesaid was dismissed by the Supreme Court January 2nd, 1906, the defendant, Teresa Bell, as administratrix of the Estate of Thomas Bell, proceeded to have the said judgment executed by an order of sale issued on said judgment, and thereupon the commissioner appointed by the said judgment to make the sale of the said land, acting under the authority of the said judgment and order of sale, advertised the 10,000 acre tract for sale in the manner provided by law, and on the 5th day of March, 1906, offered the said tract of land for sale at public auction, in accordance with the provisions of said judgment and the laws of the State of California.

At that sale, Teresa Bell, as administratrix of the Estate of Thomas Bell, deceased, became the purchaser, she bidding therefor the total amount of the indebtedness of John S. Bell as determined by the said judgment, which, with the interest thereon, then amounted to something over $109,000.00, and the costs which had been allowed the defendants, and the expenses of the sale. She received the commissioner's Certificate of Sale, which was duly recorded as required by law, March 6th, 1906.

The laws of California, at the time that the lien of Thomas Bell upon the 10,000 acre tract was created, allowed the owner of real estate, or any interest therein, six months in which to redeem under any sale made on foreclosure of mortgage or any other lien. But, shortly before the judgment last aforesaid was rendered, the law of California, as to redemption of lands from execution and foreclosure sales, was amended so as to give the owner of the same, or of any interest therein, one year in which to redeem from such sales.

In August, 1906, shortly before the six months time for redemption from the said sale of March 5th, 1906, would expire, the said Catherine M. Bell, as grantee of the said John S. Bell, moved the Superior Court in the said action of Bell against Staacke to enjoin the said commissioner from executing a deed to the purchaser as aforesaid at the expiration of six months, claiming as ground of her motion that the law as amended gave her twelve months time to redeem. The said Court sustained her motion and made its Order restraining the commissioner from making any deed of conveyance to the purchaser aforesaid, until after the expiration of twelve months from the date of the commissioner's sale aforesaid. Thus the plaintiff, John S. Bell, and his grantees obtained a full period of twelve months in which to redeem from the said

sale. The twelve months expired and no redemption had been made. Thereupon the said commissioner, by deed of conveyance dated April 8th, 1907, conveyed to the said purchaser, Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, the said 10,000 acre tract, which deed of conveyance was recorded in the office of the County Recorder of the County of Santa Barbara, State of California, on the 8th day of April, 1907. This deed purported in terms to convey the entire tract of 10,000 acres.

This concludes the statement of the material facts relative to the case of *Bell* vs. *Staacke*.

We now state the material facts relative to the case of *Bell* vs. *the San Francisco Savings Union et al.* The findings and judgment in said action are copied in full and substantially correct in the complainant's bill of complaint herein.

Findings and Decision, at pages 39-72, and the

Judgment, at pages 74-81 of the Record.

The action was begun in August, 1898, and after the first trial of the case of *Bell* vs. *Staacke*. The plaintiffs were Kate M. Bell, the wife of the said John S. Bell, and James L. Crittenden. The defendants named in the complaint were San Francisco Savings Union, Edward B. Pond and Thaddeus B. Kent (the two latter being at that time the trustees in the said deed of trust), George Staacke, Teresa Bell, and George Staacke and John W. C. Maxwell as executors of the will of Thomas Bell, deceased. The several heirs of Thomas Bell were also made defendants, as well as Teresa Bell as guardian of the minor heirs of Thomas Bell. But the heirs of Thomas Bell and the guardian aforesaid were not served and no appearance or pleading was made on their behalf. The complaint was similar to the amended and supplemental complaint in *Bell* vs. *Staacke*. In brief, it alleged that the plain-

tiffs were, as the grantees of John S. Bell, the owners of the 10,000 acre tract; recited the sale of the said land and of the 4000 acre tract by John and Thomas Bell in 1887, to Grover; the failure of Grover to make the deferred payments, and of the arrangement between Grover and John and Thomas Bell for a reconveyance of the lands in consideration of Grover being released from his obligation under the notes and mortgages; the carrying out of that agreement by the conveyance by Grover of the two tracts of land to George Staacke; that George Staacke thereafter held the 10,000 acre tract solely in trust for John S. Bell and to convey it to him on demand; that demand had been made on Staacke, and he had refused to convey it; that Staacke, on February 1st, 1892, in violation of his said trust, borrowed from the San Francisco Savings Union the sum of $60,000.00, and gave his promissory note therefor, which was endorsed by Thomas Bell; and that Staacke had, in violation of his trust, conveyed by deed said 10,000 acre tract to Campbell and Kent in trust to secure the payment to the San Francisco Savings Union of the amount of the said promissory note; that the borrowing of the said money and the making of the said deed of trust was without the knowledge and consent of John S. Bell; that Staacke and Thomas Bell appropriated to their own use the said $60,000.00; that the Savings Union, after the death of Thomas Bell and the appointment of his executors, proved a claim against the Estate of Thomas Bell upon the said note of Staacke for $60,000.00, and that the claim was allowed by the executors and approved by the Court in the matter of the Estate of Thomas Bell, deceased; that the said claim was a valid claim against the Estate of Bell and should be paid out of the assets of said estate. Prayer—first, that each of the defendants be required to set forth the nature of his or its

claim upon the said land or any part thereof, and that all adverse claims of the defendants and of each of them be determined; second, that it be adjudged that each of the defendants has no estate or interest in said land, and that the plaintiffs, Kate M. Bell and James L. Crittenden, are each the owner in fee simple of an undivided one-half thereof; third, that it be adjudged that the 10,000 acres was deeded by Grover to Staacke in trust to convey the same to John S. Bell as owner thereof, and that Staacke received the naked legal title in trust for John S. Bell to convey the same to John S. Bell; and that Staacke had no power to borrow the $60,000.00, or to make or execute the said deed of trust, and that the deed of trust is void and of no effect; fourth, that Campbell and Kent and Pond be ordered to make and deliver to plaintiffs a deed of conveyance of the said land; and for general relief.

The defendants, San Francisco Savings Union, E. B. Pond and H. C. Campbell, joined in an answer to the complaint. The answer is quite voluminous, but we have to call attention to two material facts or defenses set up therein:

First, that these defendants, at the time Staacke borrowed the $60,000.00 and made the promissory note and the deed of trust to secure the same had no knowledge or information that John S. Bell had any claim or interest whatever in the 10,000 acre tract, and that they never received any knowledge or information or intimation that John S. Bell had or claimed any interest whatever in the said land, until four years after the making of the said note and deed of trust, when John S. Bell and the executors of the Estate of Thomas Bell, deceased, applied to the said Savings Union to extend the time for the payment of the said note.

The second fact in defense alleged in the said answer of the Savings Union and Campbell and

Pond was that, on the 22nd day of December, 1896, an agreement in writing was made between the San Francisco Savings Union as party of the first part and John S. Bell as party of the second part, and Staacke as trustee, party of the third part, and said George Staacke and John W. C. Maxwell as ex-executors of the will of said Thomas Bell, whereby the time for the payment of the principal of the said promissory note of Staacke was extended until the 22nd day of December, 1898, and that the said deed of trust should be and remain a first charge on the said lands therein described, to secure the payment of the said note, and that the said agreement, before its execution, was submitted to and examined and approved by said John S. Bell and by his attorneys, and was executed by the said John S. Bell on the advice of his said attorneys. George Staacke and George Staacke as executor of the will of Thomas Bell, deceased, made and filed an answer January 3rd, 1899, to same effect.

The action slumbered in this condition of the pleadings until March 29th, 1902, when Teresa Bell, as administratrix of the Estate of Thomas Bell, deceased, with the will annexed (Staacke having been removed as executor) made and filed in the action, by leave of the Court, an amendment of and supplement to the answer of the defendants, George Staacke and George Staacke as executor. The said answer of the administratrix set forth substantially the same matters that were pleaded in the cross-complaint of the defendants in the action of Bell against Staacke, to wit, the sale by John and Thomas Bell, in 1887, of their respective tracts of land to Grover, part cash and balance in five equal yearly payments, evidenced by notes payable to Thomas Bell and secured by mortgage; Grover's failure to make the first deferred payment; the agreement between Grover and John and

Thomas Bell that Grover, on being released from the obligation of his notes for the deferred payments, should reconvey the lands to the owners, and that Grover thereafter, in accordance with said agreement, and at the request of John and Thomas Bell, conveyed both tracts of land to George Staacke, the bookkeeper and confidential agent of Thomas Bell; the making of the agreement of August 27th, 1887, between John and Thomas Bell, reciting the amount of indebtedness of John at that time, and that Thomas should hold the notes and mortgages made direct to him on John's land as security for the amount then due from John and as security for all future advances that Thomas might make to John; that, on the deeding of the land by Grover to Staacke, Staacke was put in possession, and that Thomas Bell continued thereafter to manage and control the same until his death; set up the borrowing of $60,000.00 by Thomas Bell from the Savings Union and the giving of the deed of trust by Staacke to the trustees of the Savings Union as security for the $60,000.00; the crediting of the $60,000.00 to John on his account with Thomas, and that there remained after such credit a balance due from John exceeding $49,000.00; that John had knowledge of and consented to the borrowing of the said $60,000.00, and accepted the credit thereof on his account, and that he continued thereafter to receive loans from Thomas Bell until the date of the death of Thomas, when John's indebtedness amounted to the sum of $52,-120.00; that Staacke, at the time of the death of Thomas Bell held and still held the legal title to the 10,000 acre tract, in trust as security for the payment to the Estate of Thomas Bell of the said sum of $52,120.00, with interest at the rate of seven per cent per annum.

The answer of the said administratrix then set up the pendency in the said Court of the action of

John S. Bell vs. *George Staacke et al.,* and alleged that, on the 29th day of June, 1901, judgment of the Court in said action had been made and entered in favor of herself as administratrix upon her cross-complaint in said action and against the said John S. Bell for the sum of $52,120.15, with interest thereon at the rate of seven per cent per annum from the 16th day of October, 1892, and that said judgment had not been vacated, set aside, or appealed from. (The Court will note that the judgment here pleaded as having been given in *Bell* vs. *Staacke* was the judgment against John S. Bell peronally for the said sum of money, and from which said judgment neither party in said action ever appealed; the material fact in this connection, however, is that in said answer of the administratrix in the said action of Bell against Savings Union, the pendency of the action of Bell against Staacke was alleged.)

The answer of the said administratrix further alleged that, on or about the 1st of February, 1902, the plaintiffs, Kate M. Bell and James L. Crittenden, applied to and requested the San Francisco Savings Union that it cause the trustees in the said deed of trust to proceed to sell the 4000 acre tract embraced in the description of the lands covered by the said deed of trust, and that said plaintiffs then represented to the Savings Union that, upon the sale of the 4000 acre tract by the said trustees, a sufficient sum would be realized to pay the entire amount of the principal and interest due on the promissory note of George Staacke. (It seems that the plaintiffs had, prior to the filing of the answer of the Adminstratrix, obtained an Order from the Court in said action, restraining the defendants, the Savings Union and the trustees in the deed of trust, from selling any of the lands described in the deed of trust, until the further Order of the Court.) That said plaintiffs further represented to the Savings

Union that they were willing that the restraining Order which had been granted in the said action, restraining the trustees from selling the said tracts of land or either of them therein, might be modified so as to release the said 4000 acre tract from the operation of said restraining Order. That the defendants, said Savings Union and Campbell and Pond, trustees, had applied, or were about to apply to the Court to release the said 4000 acre tract from the said restraining Order in order that the said trustees might proceed to sell the said 4000 acre tract under and by virtue of the provisions of the said deed of trust, thus throwing the burden of the indebtedness secured by the said deed of trust altogether upon the 4000 acre tract belonging to the Estate of Thomas Bell, while the total amount of the said $60,000.00 borrowed, and for which the deed of trust had been given on both tracts of land, had been applied to the credit of John S. Bell.

The administratrix, in her said answer, prayed that the said restraining Order be not dissolved as to said 4000 acre tract, and that it be adjudged and decreed by the Court that the said Staacke holds the legal title to the 10,000 acre tract in trust; first, for the use and benefit of the defendant as administratrix of the Estate of Thomas Bell, to wit, as security for the payment of the said sum of $52,120.15, with interest thereon at the rate of seven per cent per annum from the 16th day of October, 1892, and in trust to sell said 10,000 acres and apply the proceeds thereof to the payment of the expenses of sale and of the said sum of $52,120.15, with interest thereon, and to pay the balance, if any, to the defendant, Savings Union, or to John S. Bell or his assigns, as their rights may be made to appear.

Upon a motion based upon the said verified answer of the said administratrix, the Court in the

said action of Bell against the San Francisco Savings Union, refused to dissolve the restraining Order aforesaid until the further order of the Court.

Nothing further was done in the said action until December 20th, 1902, when the defendants, San Francisco Savings Union, Henry C. Campbell, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company, filed a cross-complaint in which they prayed "that this Court, having been vested by this action with jurisdiction with respect to two said tracts of land for the purpose of determining the issues raised herein by the complaint and answers thereto, retain said jurisdiction for the purpose of doing complete justice and determining completely all controversies with respect to said two tracts of land, and for that purpose take under its direction and control the execution by defendant Mercantile Trust Company of the trust created by the said deed of trust."

Thereafter, on the application of the San Francisco Savings Union and the Mercantile Trust Company, the successors of the said trustees, to wit, on October 6th, 1903, obtained an Order of Court making the U. S. Oil & Land Company a party defendant to the cross-complaint aforesaid in said action; and thereafter, by leave of Court, the defendants, San Francisco Savings Union, Henry C. Campbell, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company made and filed their amended cross-complaint against the plaintiffs and against Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, and against the defendant to cross-complaint, U. S. Oil & Land Company.

The amended cross-complaint set forth particularly all conveyances that had passed from 1874 between Thomas and John Bell concerning the said two tracts of land; set forth the sale by Thomas

and John Bell of both tracts of land in August, 1887, to Grover; the failure of Grover to make the deferred payments, and the conveyance by Grover of the two tracts of land, by consent of John and Thomas Bell to George Staacke, in consideration of Thomas Bell surrendering Grover's notes and releasing Grover from the obligation of the said mortgage; in short, the cross-complaint followed the allegations of the answer aforesaid of the defendants, the San Francisco Savings Union et al., but further alleged that, on the 8th day of March, 1893, John S. Bell commenced an action against the defendant, George Staacke and against the executors at the time of the will of Thomas Bell, wherein he claimed to be the owner in equity of said tract of land of 10,000 acres, and demanded judgment that Staacke convey the same to John S. Bell. (Meaning said action of *Bell* vs. *Staacke et al.*)

That thereafter and pending said action of Bell against Staacke, by instrument in writing dated the 22nd day of December, 1896, and recorded the 31st day of December, 1896, said John S. Bell and said George Staacke, with the knowledge and acquiescence of said plaintiff, Kate M. Bell, agreed with said defendant, San Francisco Savings Union, that the time of the payment of the principal of said promissory note of said defendant, George Staacke should be extended until the 22nd day of December, 1898, and that the security therefor created by said deed of trust should be and remain a first charge on both of said tracts of land.

That thereafter, by deed bearing date the 22nd day of December, 1896, and recorded on the 18th day of June, 1897, said John S. Bell purported to convey both of said two tracts of land to said plaintiff, Kate M. Bell; that thereafter, by deed dated the 12th of June, 1897, and recorded on the 18th day of June, 1897, the said plaintiff, Catherine M. Bell,

and said John S. Bell purported to convey an undivided half of both of said two tracts of land to said plaintiff, James L. Crittenden, and to Sidney M. Van Wyck, and that, on the 26th of November, 1900, said Van Wyck conveyed to the plaintiff, James L. Crittenden, all his right, title and interest to or in both of said tracts of land; alleged that the trustees, Campbell and Kent, named in the said deed of trust by Staacke had been succeeded in the trust declared by said deed by defendants Campbell and Edward B. Pond, and that Campbell and Pond had been succeeded by the defendant the Mercantile Trust Company; that each and all of said changes of trustees had been duly and regularly made by resolutions duly passed by the Board of Directors of the San Francisco Savings Union; that, on the 18th day of September, 1902, James L. Crittenden, by deed purported to convey to said defendant to the cross-complaint, U. S. Oil & Land Company, the undivided one-half of said 10,000 acre tract. The prayer of the amended cross-complaint was the same as of the original cross-complaint hereinbefore stated.

The said action of *Bell* vs. *the San Francisco Savings Union* was brought to trial on the 13th day of June, 1904, before Judge Taggart, the same Judge before whom the third trial of *Bell* vs. *Staacke* was had.

The trial of *Bell* vs. *the San Francisco Savings Union* was begun while the case of *Bell* vs. *Staacke* was under submission to the said Judge. When the case of *Bell* vs. *the Savings Union* was called for trial June 13th, 1904, the defendant, Teresa Bell, as administratrix of the Estate of Thomas Bell, by leave of Court, filed a further amended answer, in which she alleged as follows:

"That the parcel of real property described in paragraph I of plaintiff's complaint herein (the 10,000 acre tract) is the subject matter of litigation in an action now pending in this Court entitled *John S. Bell* vs. *George Staacke et al.,* No. 2826, upon the same claims of all the parties to this action, except as to the defendants San Francisco Savings Union, Henry C. Campbell, Thaddeus B. Kent, E. B. Pond and Mercantile Trust Company; that said action No. 2826 was commenced before this action and was pending when this action was commenced, and said action No. 2826 has been heretofore, to wit, April 19th to May 5th, 1904, tried and submitted to this Court for its decision; that the issues in said action No. 2826 involve the trusts upon which the defendant, George Staacke (defendant in both actions), holds the said parcel of land described in paragraph I of the complaint; that the plaintiffs herein, Kate M. Bell and James L. Crittenden, claim only herein as the grantees of the plaintiff, John S. Bell, in said former action, and an Order of Court has been heretofore made and entered in said former action permitting the said Kate M. Bell and James L. Crittenden to prosecute the said former action in the name of the said plaintiff John S. Bell; Wherefore this defendant asks that this action as between the plaintiff and herself, in so far as concerns the trusts upon which the defendant George Staacke holds the land described in Paragraph I of the complaint herein, abate or be continued until the final determination of said action No. 2826."

This amendment to the answer of the defendant Teresa Bell as administratrix is referred to by the said Supreme Court in its decision in *Bell* vs. *San Francisco Savings Union,* 153 Cal., at page 74. The trial proceeded upon all of the issues made by the

pleadings, notwithstanding the last amendment aforesaid to the answer of the defendant Teresa Bell as administratrix. The trial was concluded on the 23rd day of September, 1904, and on the 31st day of October, 1904, it was finally submitted to the Court for decision. (The said Court had made its decision in *Bell* vs. *Staacke* October 26th, 1904.)

The Court, on the 20th day of February, 1905, made its findings and decision in favor of the San Francisco Savings Union and the Mercantile Trust Company on their cross-complaint, except that it was found that the defendant Teresa Bell as administratrix was entitled to have the 10,000 acre tract offered for sale first by the trustee Mercantile Trust Company. These findings and decision are fully set forth in the bill of complaint herein, at pages 39-72 of the Record, and the judgment upon the findings and decision is set forth in complainant's bill of complaint, pp. 74-81 of the Record.

The action of *Bell* vs. *Staacke* is referred to in the said findings and decision in paragraph 34 thereof, page 66 of the Record, as pending and the purpose and object of said action stated; and said action of Bell against Staacke is again referred to in said findings in paragraph 40 thereof, at page 71 of the Record, as follows:

> "And the relations between said John S. Bell and his grantees of said first above described of said two several tracts of land (meaning the 10,000 acre tract) on the one hand and said defendant George Staacke and Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, with the will annexed, on the other hand, in respect of said indebtedness of said John S. Bell to said Thomas Bell, and in respect of said first above described of said two several tracts of land, and all or any parts thereof, are

> involved in said action and constitute the subject matter thereof and are in course of judicial determination and settlement therein."

Thus sustaining the plea in abatement made as aforesaid by the administratrix at the opening of the trial.

The judgment entered upon the said findings and decision was that the plaintiffs Kate M. Bell and James L. Crittenden and the defendant to cross-complaint U. S. Oil & Land Company, jointly and severally *take nothing by this action* (Record p. 74), and that the defendant Teresa Bell as Administratrix, etc., "take nothing by this action, except as herein adjudged." (The exception was that the trustee Mercantile Trust Company, in proceeding to carry out the provisions of the deed of trust and sale of said lands, first offer for sale the 10,000 acre tract, and if enough was realized thereon to pay the indebtedness due the San Francisco Savings Union the 4000 acres be not offered for sale.)

The material part of the said judgment in this connection is as follows, page 75 of the Record:

> "And it is hereby further adjudged that the said defendant Mercantile Trust Company of San Francisco be and hereby is ordered and directed to execute the said trusts."

Meaning the trust declared in said deed of trust. The judgment then proceeds to direct the said Mercantile Trust Company to advertise the land for sale in accordance with the provisions and directions of the deed of trust.

There was a motion for a new trial made by the plaintiffs, and also by the defendant Teresa Bell as administratrix, etc. An Order was made denying those motions, and an appeal was taken to the Supreme Court by the plaintiffs from the judgment

and from the Order denying their motion for a new trial. An appeal was also taken to the Supreme Court by the defendant Teresa Bell as administratrix, etc., from the said judgment and from the Order denying her motion for a new trial. The Supreme Court affirmed both Orders denying a new trial, and, after modifying the judgment by reducing the amount thereof in favor of the administratrix in a sum exceeding $16,000.00, affirmed the judgment February 14th, 1908. 153 Cal., p. 65.

Referring now to the statement of facts in *Bell* vs. *Staacke,* wherein it was shown that the commissioner appointed in that action to make the sale of the 10,000 acres on the foreclosure of the lien in favor of the Estate of Thomas Bell, made the sale of the said lands on the 5th of March, 1906, to Teresa Bell as administratrix, etc., and that thereafter, to wit, on the 8th day of April, 1907, and after the time for redemption had expired, the said commissioner, by deed, conveyed the said 10,000 acre tract to Teresa Bell as administratrix, etc. *It will be noted by the Court that, when the Supreme Court of California did finally, in February, 1908, as aforesaid, affirm the judgment in Bell against the San Francisco Savings Union, both said tracts of land included in the said deed of trust, to wit, the 10,000 acre tract as well as the 4000 acre tract, belonged to the Estate of Thomas Bell.*

In this connection it should be noted that the San Francisco Savings Union, after the death of Bell and the qualification of his executors, presented its claim as a creditor against the Estate of Thomas Bell, deceased, based upon the endorsement by Thomas Bell of the $60,000 note made by Staacke to the San Francisco Savings Union. The San Francisco Savings Union had its said claim allowed as a secured claim, and therein described the security, to wit, the said deed of trust made by Staacke

to its trustees, and the said San Francisco Savings Union, in its said claim, specifically reserved the right to resort to the said security.

After the affirmance by the Supreme Court of the judgment in *Bell against the San Francisco Savings Union* as aforesaid, the administratrix of the Estate of Bell prevailed upon the San Francisco Savings Union to delay the enforcement of the said judgment, and thereafter, having realized by sale, as administratrix through the Probate Court in the matter of the Estate of Thomas Bell, deceased, of the 4,000 acre tract, sufficient funds to pay the amount of the judgment, interest and costs due the San Francisco Savings Union, applied to the said Court in the matter of the Estate of Thomas Bell, deceased, and after regular and due notice and proceedings therein, obtained an Order from the said Court authorizing and directing the said administratrix to pay from the funds of the Estate of Bell the sum of $179,411.40 due the San Francisco Savings Union on its judgment, including interest, "in full payment of said approved secured claim *and in and for full payment and satisfaction of the amount directed to be paid said San Francisco Savings Union by the judgment in its favor of the said Superior Court of Santa Barbara County, in said action of Kate M. Bell et al., plaintiffs,* vs. *San Francisco Savings Union et al., defendants.*"

Thereupon and in accordance with the directions of the said Order, dated the 12th day of June, 1908, the said administratrix paid to the San Francisco Savings Union the said total su mof $179,411.40 from the funds of the Estate of Bell, together with all expenses then due the said San Francisco Savings Union, and demanded of the San Francisco Savings Union and its trustee, the said Mercantile Trust Company, a re-conveyance of the lands described in the said deed of trust; thereupon the San Francisco

Savings Union acknowledged the receipt of the full amount due on the said judgment and directed the said trustee, the Mercantile Trust Company to, and the Mercantile Trust Company did, make, execute and deliver unto the said Teresa Bell as administratrix, etc., a conveyance of all that tract of land embraced in the said original deed of trust made by Staacke to the San Francisco Savings Union. The said payment was made by the said administratrix on June 15th, 1908, and on the same date the said deed of re-conveyance was delivered to the said Teresa Bell as administratrix, and was by her, on the same date, filed for record in the office of the County Recorder of the County of Santa Barbara.

ERRORS IN APPELLANT'S STATEMENT OF CASE.

We now call attention to some of the errors contained in the "Statement of the case in appellant's brief herein."

It is stated on page 8 of said brief that the case of *Bell* vs. *Staacke* was a suit brought by John S. Bell to quiet title and to compel Staacke to convey the land in controversy in the pending suit to John S. Bell.

The case of *Bell* vs. *Staacke* was brought, in the first instance, as shown in our Statement of the Case hereinabove, to obtain a judgment against the executors of the Will of Thomas Bell, requiring them to pay a monthly allowance of $360 to John S. Bell, and to declare that the said monthly allowance was a lien and charge upon the said 10,000 acres. In that suit, as originally brought, as stated hereinabove, the plaintiff John S. Bell alleged in his complaint that the monthly allowance of $360 claimed, and all other sums theretofore advanced and thereafter to be advanced by Thomas Bell to

him, were a charge upon the said 10,000 acres, to be paid out of the proceeds of the sale thereof. The allegations of the original complaint in this respect are quoted in the decision of the Supreme Court of California in *Bell* vs. *Staacke,* 141 Cal. at page 200.

It is erroneously stated on page 9 of said brief that Teresa Bell was a party to the cross complaint of the San Francisco Savings Union in *Bell* vs. *said S. F. S. Union.* The appellant at pages 10 and 11 of his brief refers to the findings and conclusions of law in said last mentioned case, and then at near top of page 11 states, "The Court found in and by said findings of fact that," etc., proceeding then to copy from the findings in *Bell* vs. *Staacke* on the second trial thereof, all of which findings except the amount of John S. Bell's indebtedness to Thomas Bell were negatived by the findings on the new trial ordered by the said Supreme Court.

A correct statement of the issues involved in that action and pertinent to the questions now under consideration here is contained in the statement hereinabove by these appellees, which statement by these appellees is verified by the findings of the Court in *Bell* vs. *the San Francisco Savings Union,* set out in the complainant's bill of complaint on pages 39 to 72 of the Record, which findings are presumed to respond to the issues made by the pleadings.

It is further stated, on page 10 of said brief that "neither decrees nor proceedings in *Bell* vs. *Staacke* were pleaded by any of the parties in the suit of *Bell* vs. *San Francisco Savings Union.*"

It is correctly stated hereinabove by these appellees that the pendency of the suit of *Bell* vs. *Staacke* was pleaded in the amended and supplemental answer filed in said action by Teresa Bell as administratrix etc. on March 29th, 1902, and again

pleaded by her in the amendment to her said answer filed by leave of Court on the 13th day of June, 1904, at the commencement of the trial of said action; and the fact that the pendency of the said action of *Bell* vs. *Staacke* was pleaded in the said action of *Bell* vs. *San Francisco Savings Union* is affirmed in the decision of the Supreme Court of California in said action.

See *Bell* vs. *San Francisco Savings Union,* 153 Cal. at page 74; 94 Pac. 225.

Further, it was found as a fact by the Court in its decision in the said action of *Bell* vs. *San Francisco Savings Union* that the suit of *Bell* vs. *Staacke* was pending. The said findings in *Bell* vs. *San Francisco Savings Union* refer to the action of *Bell* vs. *Staacke* in paragraph 40 thereof, page 71 of Record, as follows:

> "That said action was commenced on the 8th day of March, 1893, by said John S. Bell against said defendant George Staacke and said executors at that time of the Will of Thomas Bell, deceased, is still pending in this Court and is numbered 2826 in the Register of Actions, and the relations between said John S. Bell and his grantees of the said first above described of said two several tracts of land (meaning the 10,000 acre tract) on the one hand, and said defendant George Staacke and Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, on the other hand, in respect of said indebtedness of said John S. Bell to said Thomas Bell and in respect to said first above described of said two several tracts of land, and all or any parts thereof, are involved in said action and constitute the subject matter thereof, and are in course of judicial determination and settlement therein," which practically sustains the plea in abatement by the said administratrix.

A further erroneous statement is made in the said brief to the effect as follows, to wit:

> "That all the transactions had between the San Francisco Savings Union and Teresa Bell as administratrix of the Estate of Thomas Bell were had and done after the decree, directing said land to be sold and the surplus proceeds thereof paid to Staacke in accordance with the stipulations contained in the deed of trust, had become final and conclusive as to all parties."

The controlling and main provision of the judgment of the Court in *Bell* vs. *San Francisco Savings Union* was as follows:

> "And it is hereby further adjudged that said defendant Mercantile Trust Company of San Francisco be and hereby is ordered and directed to execute said trusts and for that purpose to publish at least twice a week" etc., "a notice of the time and place of sale," and so forth.

Of course, if the trust could be executed without the sale of the property, or if there was a trust declared in the trust deed which authorized Staacke or his assigns to pay the debt and receive a deed of re-conveyance without a sale, it would have been the duty of the trustee, notwithstanding a direction of sale contained in the judgment, to receive payment of the debt and make the re-conveyance in accordance with the provisions of the trust deed. There was such a provision in the deed of trust and that was accordingly done as hereinbefore stated. The deed of trust in full is set out in the findings in *Bell* vs. *San Francisco Savings Union,* which are copied in the bill of complaint (pp. 58-64 of Record).

POINTS AND AUTHORITIES.

It was stipulated by the respective counsel herein in Lower Court preceding the hearing on the special defense of previous judgments etc. that the findings and judgment in *Bell* vs. *Staacke* of June 29th, 1901, and the findings and judgment in *Bell* vs. *San Francisco Savings Union,* were substantially correct as set forth in the bill of complaint, and that the subsequent proceedings in that action and in *Bell* vs. *San Francisco Savings Union,* were substantially correct as set forth in the answers of the defendants, and such stipulation was embodied in the decree dismissing the bill of complaint.

It is set forth and pleaded in the answers of the defendants that, upon the appeal by Teresa Bell as Administratrix and by George Staacke individually from the Order of the Court denying them a new trial of the said action of *Bell* vs. *Staacke,* that the Supreme Court of the State of California did make its judgment and Order reversing the Order of the said Superior Court denying a new trial, and did order a new trial of all issues except as to the issue involving the amount of the indebtedness of John S. Bell to Thomas Bell (p. 107 of Record). And the Order of the said Supreme Court directing a new trial was fully set forth in the decision of the Supreme Court cited in appellant's brief, page 53, to wit, in *Bell* vs. *Staacke,* 141 Cal., pages 203-204.

It is contended by the appellant that the Supreme Court of California had no jurisdiction or power to order a new trial in the said action of *Bell* vs. *Staacke* after the appeal from the judgment herein had been dismissed by the Supreme Court; and that the Supreme Court of California in ordering a new trial in *Bell* vs. *Staacke* after the appeal from the judgment therein had been dismissed had de-

parted from its ruling on that question theretofore. This statement is not correct. The first ruling of the said Supreme Court upon that question that we have been able to find was made in October, 1870, in the case of

Fulton vs. *Hanna,* 40 Cal. 278-281.

In that case there had been an appeal from the judgment by the defendants and also from the Order denying the defendant's motion for a new trial. The appeal from the judgment had been dismissed by the Supreme Court for want of prosecution; and, while the appeal from the Order denying a new trial was still pending before the Court. The plaintiff then demanded execution upon the judgment from the clerk of the trial Court, and, on the clerk's refusal, the plaintiff petitioned the Supreme Court for a writ of mandate to compel the clerk to issue the execution. The Supreme Court denied the writ of mandamus on two grounds: First, on the ground that, in the appeal from the Order denying a new trial, a sufficient stay bond had been given; and, second, on the grounds stated by the Supreme Court, as follows, to wit:

> "Although an appeal from an Order denying a motion for a new trial is in a different and distinct line of proceeding from a direct appeal from a judgment, still a reversal on appeal from the Order denying a motion for a new trial and remanding the cause for retrial as effectually vacates the judgment as a reversal of the judgment upon a direct appeal therefrom * * * * The fact that a direct appeal from the judgment had been dismissed certainly does not place the appellant in any different or more unfavorable position in respect to his appeal from the Order than he would have occupied had no direct appeal from the judgment ever been taken."

The case of *Fulton* vs. *Hanna,* supra, was approved in the case of *Thompkins* vs. *Montgomery,* 116 Cal. at page 123 (decided February, 1897), where the Supreme Court says:

> "The right of the appellant to have the execution stayed pending the appeal from the Order denying a new trial is not impaired by the fact that the appeal from the judgment is dismissed."

In the case of *Pierce* vs. *Birkholm* (decided January, 1896), 110 Cal. page 672, in reviewing cases there mentioned and reported in 23 Cal. 549, 28 Cal. 528, 33 Cal. 401, 62 Cal. 558, 76 Cal. 90, and 55 Cal. 419 (covering a period of time from 1863 to 1886), the Court held the said cases did not sustain the proposition for which they were cited by the counsel, to wit:

> "That the granting of a motion for a new trial vacates the judgment notwithstanding an appeal was taken from the Order granting a new trial."

The Court, however, said further:

> "They (the said cases cited) do sustain the general proposition, not questioned, that the effect of an Order granting a new trial is to set aside the judgment."

Thus it appears that when the Supreme Court in the case of *Bell* vs. *Staacke,* 141 Cal. page 203, reversed the Order of the trial Court denying the defendants' motion for a new trial and ordered a new trial, it did not assume any power which it had theretofore refused to exercise.

This appellant, or rather its grantor, James L. Crittenden, in the last appeal to the Supreme Court of the State of California, in *Bell* vs. *Staacke,*

raised *this very question.* The said Court, in disposing of the same *(Bell* vs. *Staacke,* 151 Cal. at page 547) said:

> "A claim that the Superior Court had no jurisdiction to retry this case, notwithstanding that it was remanded by this Court for a new trial, is based on the fact that the appeal from the former judgment in favor of the plaintiff was dismissed. This, it is said, constituted affirmance of the judgment preventing the subsequent giving of any other judgment. But a judgment, even although expressly affirmed on appeal, is vacated by an Order granting a new trial." (Citing *Sweet* vs. *Grey,* 141 Cal. 83-88, 74 Pac. 551).

In the case cited, *Swett* vs. *Grey,* there was a judgment in favor of the plaintiff from which the defendant appealed; the trial Court granted the defendant a new trial. From the Order granting a new trial plaintiff appealed, and the Supreme Court, on November 6th, 1903, affirmed the Order granting the defendant a new trial. Then the defendants appealed from the judgment, came to hearing before the Supreme Court and the judgment was affirmed, the Court saying, at page 88:

> "The judgment, so far as this appeal is concerned, should be affirmed."

Then followed, at page 88, the Order or judgment of the Supreme Court, as follows:

> "For the reasons given in the foregoing opinion, the judgment is affirmed, but this affirmance does not affect the Order granting a new trial which has been affirmed and which vacates the judgment."

The ruling by the Supreme Court of California on the question in the cases aforesaid is in strict conformity to the statutory provisions on the subject in the State of California.

Part 2, Chap. VII., Sec. 658 to 663, C. C. P. of Cal.

From these provisions it appears that a motion for a new trial is a new and independent proceeding in an action, which can only be instituted after a trial has been had and a conclusion or judgment reached.

Furthermore, at the new trial of *Bell* vs. *Staacke,* ordered by the Supreme Court as aforesaid, to wit, the trial had before Judge Taggart in April and May, 1904, the complainant's grantors, James L. Crittenden and Catherine M. Bell, the grantees of the plaintiff John S. Bell and grantors of appellant, the U. S. Oil & Land Co., appeared and submitted to the jurisdiction of that Court and fully contested the case on all the issues upon which a new trial had been ordered. They appealed to the said Supreme Court after the decision against them from the Order denying them a new trial, and upon that appeal raised in the said Supreme Court as aforesaid the question of the jurisdiction of the Supreme Court to order a new trial after an appeal from the judgment therein had been dismissed. The said Supreme Court, as aforesaid, decided against the proposition of those appellants and their grantee, the complainant in this action is concluded by the said ruling of the Supreme Court of California. We submit that there never was a clearer case for the application of the rule of *res adjudicata.*

Final judgment in a state Court concludes the parties when suit is brought on same cause of action in United States Court.

Duncan vs. *Gegan,* 101 U. S. 810.

The judgment of state Court is conclusive in the federal Courts to same extent as recognized in the state Courts.

Covington vs. *First Nat. Bank,* 198 U. S. 100;
Forsyth vs. *Hammond,* 166 U. S. 205;
Fauvergin vs. *New Orleans,* 18 How. 470.

"What effect a judgment of a state Court shall have as res adjudicata is a question of state or local law."

Union Bank vs. *Memphis,* 189 U. S. 71.

This is so though the U. S. Court would have decided differently but for the state Court decision.

Nicols vs. *Levy,* 5 Wall. 433.

II.

The next contention of the appellant is that both legal and equitable titles to the 10,000 acre tract and the 4,000 acre tract were, at the time of the decree and Order of Sale, in *Bell* vs. *Staacke* and from a date prior to the commencement of that suit, had been, the one, in Campbell and Kent, trustees, and the other in San Francisco Savings Union as purchasers for value and without notice of the trusts in Staacke, and that neither the trustees nor the Savings Union were parties to the action of *Bell* vs. *Staacke.* Or, in other words, that the legal title to said lands were in the trustees and the beneficial interest in the San Francisco Savings Union. If this was so, then neither the complainant nor its grantors ever had any cause of action against Thomas Bell, his assigns or successors.

This question, however, has been settled by repeated decisions of the Supreme Court of the State of California against the contention of appellant. The practice of securing the payment of money loaned upon real estate by deeds of trust has been

so long in vogue in the State of California, and the rights and estates of the parties to such transactions and to such deeds so clearly and so often defined, that it would seem useless for the appellant to take the position stated as aforesaid. The leading case in California on this question is the case of *Koch* vs. *Briggs,* 14 Cal. 262, where the difference between a mortgage given as security for a debt and a deed of trust given for the same purpose is pointed out, and that difference was that, in a mortgage, on default of the mortgagor, the equity of the mortgagor remaining must be foreclosed by proceedings in Court, while, in the case of a deed of trust, on default of the grantor, the grantor's equity in the premises is closed by a sale of the property by the trustees in the manner provided in the deed of trust.

The decision in *Koch* vs. *Briggs* was written by Justice Stephen J. Field, who afterwards served upon the bench of the Supreme Court of the United States with distinguished ability. While Justice Field was one of the Justices of the United States Supreme Court, to wit, in 1894, he wrote the opinion in the case of *Bell Mining Co.* vs. *Butte Bank,* 156 U. S. 470-478, wherein he quoted from the opinion written by him in *Koch* vs. *Briggs,* 14 Cal. supra. He quotes therein also from the opinion by him in *Foggarty* vs. *Sawyer,* 17 Cal. 589. The material part of the opinion in *Koch* vs. *Briggs,* quoted by the learned Justice, is as follows:

> "The foreclosure (meaning the mortgagor's or grantor's equity remaining in the mortgage or deed of trust) might be by judicial foreclosure or by any other regular proceeding which resulted in extinguishing the mortgagor's right of property by sale."

And the material part quoted from *Foggarty* vs. *Sawyer,* supra, is as follows:

"While a mortgage, under the provisions of section 260, Practice Act of the State of California, is only a lien, it does not prevent the mortgagor from making an independent contract for the possession, or from authorizing a sale of the premises, and that there are no legal obstacles to making such a contract with the mortgagee or clothing him with power of sale. The right to dispose both of the possession and estate follows necessarily from the ownership of the property, and this being so, no valid objection can be urged against incorporating the contract and power in the same instrument with the mortgage. They do not become in that way any part of the mortgage, but are as much independent of it as though contained in separate instruments."

The learned Justice then proceeds:

"We agree with what is stated by the Court in that case * * * * The power of sale in the indenture, whether we call it a deed of trust or a mortgage, does not change its character as an instrument for the security of the indebtedness designated, but it is an additional authority to the grantee or mortgagee; and if he does not choose to foreclose the mortgage by any of the ordinary methods provided by law, he can proceed under the power added for the sale of property to obtain payment of the indebtedness. The insertion of a power of sale does not affect the mortgagor's right to redeem so long as the power remains unexecuted and the mortgage is not, as it may be, foreclosed in the ordinary manner; but, when a sale is made, the interest of the mortgagor is wholly divested, embracing his equity of redemption."

In short, the learned Justice likened a deed of trust to a mortgage with power of sale and held that, until a sale of the property was had, either under foreclosure or under the power in the grant from the mortgagor, the mortgagor's or grantor's right of redemption remained.

It has been held by the Supreme Court of the State of California in the following cases that, where the owner of real property borrows money upon the security thereof, and conveys the property by deed of trust to a third party as security for the payment of the money borrowed, an interest remains in the grantor in the realty which is subject to attachment by his creditors, and to conveyance or further encumbrance by him, subject, of course, to the deed of trust.

Kennedy vs. *Noonan,* 52 Cal. 326;
Fish vs. *Fowlie,* 58 Cal. 374;
Halsey vs. *Martin,* 22 Cal. 645;
Brown vs. *Campbell,* 100 Cal. 639-647, 35 Pac. 433, and 38 Am. St. Rep. 314;
King vs. *Gotz,* 70 Cal. 240.

III.

The next contention by the appellant is that "the decree on the new trial in *Bell* vs. *Staacke* is null and void inasmuch as the Court had jurisdiction of neither the legal nor equitable titles to the lands or of the land itself, which were the subject of the suit." We do not think that such statement demands any serious consideration. That John S. Bell, Thomas Bell's debtor, owned an interest in the 10,000 acres, the legal title to which stood in the name of Staacke as security for the said indebtedness, is clear. By the conveyance of the land by John S. Bell to his wife, and by them to Crittenden, and by Crittenden to U. S. Oil & Land Company,

complainant herein, the complainant acquired that interest, subject, of course, to the claim of Thomas Bell upon the said land as security, with the right to have the lands, on default of the debtor, sold through foreclosure proceedings through a Court of competent jurisdiction, and subject, of course, to the right acquired by the Savings Union when Staacke, with the consent of John S. Bell, conveyed the said land to the trustees of the Savings Union as security for the payment of the $60,000 borrowed from the Savings Union.

The said judgment in *Bell* vs. *Staacke* disposed of all interest of the plaintiff John S. Bell and his said grantees in the land in controversy, except the right of redemption, and that was finally closed out by the commissioner's sale and deed.

John S. Bell and his grantees had the right to redeem the said lands from the claim of Thomas Bell thereon as security and the right to redeem after judgment of foreclosure of the lien of Thomas Bell in *Bell* vs. *Staacke,* until the sale thereunder and for twelve months thereafter, as shown in our statement aforesaid. If such redemption had been made, then John S. Bell, or any of his grantees making such redemption, would have been entitled to redeem the said land from the claim of the San Francisco Savings Union; *that is, the right to pay the debt due the San Francisco Savings Union after it became due and to demand and receive a re-conveyance of the land from the trustee in accordance with the provisions of the deed of trust. When the lien,* in favor of the Estate of Thomas Bell, upon the said lands, to wit, in favor of Teresa Bell as administratrix of the said estate, as asserted in her cross-complaint in the suit of *Bell* vs. *Staacke, was foreclosed and the land sold* under the decree and Order of Sale in *Bell* vs. *Staacke,* no redemption thereafter having been made, *the execution and de-*

livery of the deed of conveyance to the purchaser at the commissioner's sale therein, to wit, to Teresa Bell as administratrix of the Estate of Thomas Bell, *vested all the right and interest of John S. Bell and of his grantees, and of Staacke,* in Teresa Bell as administratrix of the Estate of Thomas Bell. She thereby became the *"assigns"* of Staacke of all the right, claim, interest and estate, in the said lands, of John S. Bell and of Staacke, subject, however, to the said deed of trust, and as the owner and holder of such rights, interest and estate in the said lands, the said administratrix was entitled to redeem the land from the claims of the San Francisco Savings Union before any sale under the deed of trust was made by the trustees, and she did so redeem by paying, under the Order of the Probate Court, the judgment of the San Francisco Savings Union.

IV.

> Appellant in its point 3, p. 33 of its brief, contends that "the decrees in *Bell* vs. *San Francisco Savings Union* is a conclusive termination of the rights of all parties in *Bell* vs. *Staacke,* and of the status of the San Francisco Savings Union and its trustees as purchasers for value without notice of the land in controversy."

We have shown hereinabove, in correcting erroneous statements by the complainant, that the Court, in *Bell* vs. *the San Francisco Savings Union* never found or adjudged that the San Francisco Savings Union, or its trustees were purchasers of the land in controversy for value and without notice. The deed of trust conveyed to the trustees nothing but the naked legal title. They had no right of possession or control over the property in any manner. The San Francisco Savings Union acquired by the said deed of trust security only for the payment of

the debt on the default of the debtor, and the right to avail itself of the said security by having its trustees sell the land on its demand after default of the debtor. Neither the Savings Union nor its trustees, nor both of them, acquired by the deed of trust the whole estate in the said land.

While the Court, in its findings and decision in *Bell* vs. *San Francisco Savings Union* did not therein finally dispose of the conflicting claims of John S. Bell and his grantees, and of the administratrix of of the Estate of Thomas Bell, deceased, upon the land in controversy, yet it did, by its findings, establish the fact that the title to the 10,000 acre tract was held by Staacke in trust, as security for the payment of the indebtedness due by John S. Bell to Thomas Bell.

> See finding 25 in *Bell* vs. *the San Francisco Savings Union,* set forth in the bill of complaint, pp. 54-56 of Record.

Inasmuch as the same issue on which said finding 25 was based was pending between John S. Bell and his grantees on the one part and Staacke and the administratrix of Bell on the other part, in the prior action of *Bell* vs. *Staacke,* the pendency of which was pleaded in the answer, in *Bell* vs. *Staacke,* of the said administratrix and found as a fact in *Bell* vs. *San Francisco Savings Union,* the Court in *Bell* vs. *San Francisco Savings Union* relegated said parties for the final determination to the determination of the Court in that action. John S. Bell and his grantees being parties to the action of *Bell* vs. *San Francisco Savings Union,* they are bound and concluded by this disposition in *Bell* vs. *the San Francisco Savings Union* of the issues involved in *Bell* vs. *Staacke.*

The appellant proceeds under said Point 3 (a) on page 33 of its brief and say that:

"The only way in which Teresa Bell as administratrix of the Estate of Thomas Bell could have availed herself of any rights under the decree in *Bell* vs. *Staacke,* would have been to plead it in abatement in *Bell* vs. *San Francisco Savings Union* until the former decree became final."

We have shown that the pendency of *Bell* vs. *Staacke* was pleaded in the amended and supplemental answer of Teresa Bell as administratrix, filed in March, 1902, and again in her amendment to her answer filed at the beginning of the trial of *Bell* vs. *San Francisco Savings Union,* June 13th, 1904. We repeat here the material part of the latter amendment to the answer of the defendant, the administratrix of the Estate of Thomas Bell:

"She states that the parcel of real property described in paragraph I of plaintiff's complaint herein (meaning the 10,000 acre tract) is the subject matter of litigation in an action now pending in this Court entitled *John S. Bell* vs. *George Staacke et al.,* No. 2826, upon the same claims of all the parties to this action, except the defendants San Francisco Savings Union, Henry C. Campbell, Thaddeus B. Kent, E. B. Pond and Mercantile Trust Company. Said action No. 2826 was commenced before this action and was pending when this action was commenced. The said action No. 2826 has been heretofore, to wit, April 19th to May 5th, 1904, tried and submitted to this Court for its decision, but the issues in said action No. 2826 involve the trusts upon which the defendant George Staacke holds the said parcel of land (meaning the 10,000 acre tract) that the plaintiffs herein, Kate M. Bell and James L. Crittenden, claim only herein as the grantees of the plaintiff John S. Bell in said former action,

> and an Order of Court has heretofore been made in said former action permitting the said Kate M. Bell and James L. Crittenden to prosecute the said former action in the name of said plaintiff John S. Bell. Wherefore this defendant asks that this action, as between the plaintiffs and herself, insofar as it concerns the trusts upon which the defendant George Staacke holds the land described in paragraph I of the complaint herein abate or be continued until the final determination of said action No. 2826."

It appears now that the Court in *Bell* vs. *the San Francisco Savings Union,* when it came to make its findings and decision, did practically grant the request of the said administratrix made in the amendment to her answer just quoted.

> See finding 40 in *Bell* vs. *San Francisco Savings Union,* as alleged in bill of complaint, p. 71 of Record.

And we repeat that the complainant and appellant here, U. S. Oil & Land Company, as the grantee of James L. Crittenden and of John S. Bell through Crittenden, is bound and concluded by the Court's decision in *Bell* vs. *San Francisco Savings Union,* aforesaid, to the effect that the claims of John S. Bell and his grantees on the one part, and the claims of the Estate of Thomas Bell and of the administratrix of his estate on the other part, were relegated to such disposition as the Court in *Bell* vs. *Staacke* should make.

The appellant proceeds further in its Points and Authorities, as follows:

> "Nothing, however, prevented the parties from waiving their right to plead the decree in the suit pending of *Bell* vs. *Staacke* in abatement of *Bell* vs. *San Francisco Savings Union.*"

We call attention again, as confirmatory of our statement that the pendency of *Bell* vs. *Staacke* was pleaded in *Bell* vs. *San Francisco Savings Union* by the defendant Teresa Bell as administratrix in her answer and amendment to her answer, to the statement in the decision of the Supreme Court in *Bell* vs. *San Francisco Savings Union,* 153 Cal. at page 74, to wit:

> "It is found, however, that the action of *Bell* vs. *Staacke,* the pendency of which was set up in the pleadings, was still pending at the time of the decision, and that the question of the relations between John S. Bell and his grantees on the one hand, and of Staacke and the Estate of Thomas Bell on the other, in respect of the indebtedness of John S. Bell to Thomas Bell and of the 10,000 acre tract, are involved in said action and are in course of judicial determination and settlement therein. The judgment, accordingly, made no adjudication of the rights of John S. Bell and Thomas Bell, or their successors as between each other, leaving the question of those rights to be determined in *Bell* vs. *Staacke.*"

Now, it would seem to be impossible to make anything clearer than the fact, aforesaid, that the parties in *Bell* vs. *Staacke,* and their respective interests in the land in controversy, insofar as those parties were also parties in *Bell* vs. *San Francisco Savings Union* and their interest in the land in controversy there involved, were, by the final disposition of the case of *Bell* vs. *San Francisco Savings Union,* relegated for final disposition to the Court in the case of *Bell* vs. *Staacke.*

V.

The bill of complaint does not state a cause for equitable relief, and we submit that the decree dismissing the bill can be affirmed on that ground.

That point was raised in the Lower Court by the defendants by general demurrers to the bill. (Record pp. 101-132, 163). It is shown by the allegations of the bill that the complainant had an adequate, practical and easy remedy at law. It could have gone into the Superior Court of Santa Barbara County in the case of *Bell* vs. *Staacke,* as the grantee of the plaintiff John S. Bell and by motion compelled the clerk of said Court, C. L. Hunt, to deliver the deed alleged to be held by him from Staacke, for the benefit of John S. Bell and his grantees. It could have moved the said Court in *Bell* vs. *San Francisco Savings Union* (being a party thereto) to set aside the satisfaction of the judgment alleged and for Order directing the defendant Mercantile Trust Company to proceed to execute the Order of Sale, which it alleges it was entitled to.

"Equity will not entertain jurisdiction where there is an adequate remedy at law."

Knox vs. *Smith,* 4 How. (U. S.) 298;
Russell vs. *Clark,* 7 Cranch 67;
Whitehead vs. *Shattuck,* 138 U. S. 147;
Buzzard vs. *Hauston,* 119 U. S. 347;
Moulton vs. *Knapp,* 85 Cal. 355 at 388-9;
Ketchum vs. *Crippin,* 37 Cal. 223.

This Court will take judicial notice that the Superior Courts of California are Courts of general jurisdiction.

Furthermore, we submit that the complainant is not entitled to any equitable relief because it does not offer to do equity, to wit: it claims under the findings and judgment in *Bell* vs. *San*

Francisco Savings Union, which affirms that Staacke held the title to the 10,000 acres in trust as security for the payment of the indebtedness of John S. Bell (its grantor) to Thomas Bell, and does not offer to pay the said indebtedness or any portion thereof, but in other parts of the bill denies such trust and security.

Finally we submit that there has been nothing in the conduct of John S. Bell or of his grantees that a Court of Equity would commend, but much that a Court of Equity would and has condemned. He accepted the credit of the $60,000 borrowed of the Savings Union, consented to the deed of trust, apparently because the lands had depreciated to such an extent that the uncle's land had to be included to make up the security. As soon as his uncle and benefactor was dead, he tried to foist a false claim upon his estate.

Then, in December, 1896, when the $60,000 note to the Savings Union was about to become barred by the Statute of Limitation and sale of his land was pending, he entered into a solemn written agreement with the Savings Union to extend the time of payment on said note to December, 1898, and agreed that the said deed of trust was a first lien on his land. He then immediately conveyed the land to his wife, and a little later he and his wife conveyed an undivided one-half thereof to Crittenden. Then, with easy conscience, and Crittenden as his attorney, he filed a verified amended complaint in the pending suit against his benefactor's estate, denying all indebtedness thereto and alleging that Staacke held the title to the 10,000 acres in trust solely for him, to take the place of the complaint in which he had sworn that Staacke held the said land as security for all that his uncle had advanced to

him and to be advanced, and then, still piloted by his grantee attorney, brought suit against the Savings Union to overthrow the deed of trust.

Defeated in both these cases, he and his wife have ceased to litigate further.

Not so, however, with his grantee, Crittenden. He assigned to an alleged Arizona corporation and, seven years after the state Court adjudged that said corporation take nothing, it appears as complainant in the Lower Court in this action, with Crittenden as its solicitor, alleging as the basis of its complaint that the land which, in 1892, was not considered good security for $60,000, has increased in value.

We respectfully submit that the decree should be affirmed.

T. Z. Blakeman,
Solicitor for Appellees Teresa Bell as Administratrix et al.

Peter J. Crosby,
Solicitor for Appellees Eustace Bell et al.